

HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate
APO 343

Yokohama, Japan
21 June 1946

Case No. 24

UNITED STATES OF AMERICA vs AKIYOSHI TSUJINO

REVIEW OF THE STAFF JUDGE ADVOCATE

1. The attached record of trial by Military Commission appointed by paragraph 2, S.O. 94, Headquarters Eighth Army dated 10 April 1946 as amended by paragraph 16, S.O. 96, Headquarters Eighth Army dated 12 April 1946 and paragraph 1, S.O. 105, Headquarters Eighth Army dated 22 April 1946, having been referred to the Staff Judge Advocate this review of the record, with an opinion and recommendation relating thereto, is submitted to the Commanding General, Eighth Army.

PERSONAL DATA CONCERNING ACCUSED.

Name	Akiyoshi Tsujino
Age	27
Residence	Osaka-Fu, Sonnan-Gun, Narutaki Mura, No. 90.
Marital Status	Married, one child.
Education	Higher Primary School (age 16)
Vocation	Barber
Service	Four years in the Japanese Army

2. Synopsis of the Charge, Specifications, Pleas, Findings, Legal Sufficiency and Sentence:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Between 1 October 1943 and 30 September 1945, accused, a member of the Imperial Japanese Army, committed brutal atrocities against American POW's at Hirohata POW Camp, Honshu, Japan.	Not Guilty	Guilty	Yes
Spec. 1: Beat and otherwise mistreated 21 American POW's in May 1945.	Not Guilty	Guilty	Yes
Spec. 2: Mistreated and tortured Pfc. Allen in June 1945.	Not Guilty	Guilty	Yes
Spec. 3: Struck and beat Sergeant Walter L. Konioby and 7 other POW's in January 1944.	Not Guilty	Guilty, except the words "31 January 1944", substituting therefor the words "1 September 1945".	Yes
Spec. 4: Beat and mistreated 9 American POW's in early 1944.	Not Guilty	Guilty	Yes

(Review of the Staff Judge Advocate, cont'd.)

	<u>Plea</u>	<u>Finding</u>	<u>Legally Sustained</u>
Spec. 5: Struck, beat and mistreated more than 100 American POW's in early 1945.	Not Guilty	Guilty	Yes
Spec. 6: Mistreated and tortured POW's Loy, Fox, Hernanles, Pritchard, and Lee in March 1945.	Not Guilty	Guilty	Yes
Spec. 7: Between 1 October 1943 and 30 September 1945, appropriated to his own use certain Red Cross supplies intended for American POW's.	Not Guilty	Guilty	Yes
Spec. 8: Between 1 October 1943 and 30 September 1945, beat, mistreated and tortured numerous American POW's.	Not Guilty	Guilty	Yes

SENTENCE: Confinement for thirty years.

3. The record of trial in this case comes to this headquarters for an appellate review, the primary function of which is to assure that the accused has been accorded the rights and protection to which he is entitled as an accused war criminal on trial before a Military Commission.

4. **EVIDENCE:** Briefly summarized, the competent evidence is to the following effect:

a. For the Prosecution:

Superior Private Akiyoshi Tsujino of the Imperial Japanese Army was assigned as a medical orderly at Hirohata Prisoner of War Camp, Honshu, Japan, from 27 March 1944 to 1 September 1945 (Ex. 11, 12) with duties including supervision of the camp dispensary and regular inspection of sanitary condition throughout the camp (Ex. 3).

As to Specification 1: In early summer 1945 accused, with three other Japanese soldiers, beat, clubbed and gave the water cure to a group of about twenty-five American Prisoners of War, including Sergeants Konishy, Nidy and Moore, Corporal Waller, Privates Grady, McAllister, Ligon, Elkins, Rucker, Lundgren, Smith, Elmer, Orr, Darnell, Harless, Thompson, Thiel, Monday, Whitman, Chack and Garrison, who had stolen food from a Japanese vessel they were engaged in unloading (Ex. 4-14, 31). The mistreatment began shortly after the camp commander left the camp at 5:30 p.m. and continued for five hours. Many of the men lapsed into unconsciousness but were revived by the Japanese by immersion in a tub of icy water and the beatings resumed (Ex. 4-10, 14). They were finally carried to their barracks in a semi-conscious, hysterical and delirious condition (Ex. 4, 9). All but one of the victims were required to go on work details the following morning, and many were beaten and cuffed while marching because of their inability to keep pace with the formation (Ex. 5, 8, 10, 12). One man subsequently developed a back infection as a result of the beating and was hospitalized for many months (Ex. 4, 6, 9, 11).

As to Specification 2: In June 1945 Pfc. Allen was beaten into unconsciousness with clubs and pick-axe handles by accused and two other Japanese for violating a "no smoking" regulation (Ex. 15, 16). Although unable to walk

(Review of the Staff Judge Advocate cont'd.)

after the beating he was given no medical care by the Japanese even though a few days later the American POW doctor found it necessary to operate in order to remove blood clots from his legs. He was still hospitalized as a result of his injuries on 17 October 1945 (Ex. 15-18).

As to Specification 3: In January 1944 Staff Sergeant Walter N. Konichy and seven other Americans who had stolen cooked rice from a ship's galley were lined up in zero weather, stripped of their clothing, and beaten about the face and body with pick handles, ropes and belts by accused and several Japanese guards (Ex. 19). After breaking the surface ice on a large tub of icy water, four of the men were forced to hold the hands of the remaining four under water until they lost consciousness. When they were unable to stand following this treatment, they were kicked by the Japanese until picked up by their comrades (Ex. 19).

As to Specification 4: Following the theft of some dried persimmons and cigarettes by five prisoners of war, ten Americans were stripped and immersed in a large tub of icy water by accused and two other Japanese, even though the guilty five had confessed to the theft. Those who had admitted implication in the incident were then beaten with clubs and belts (Ex. 19).

As to Specification 5: On an unspecified date in 1944 or 1945, the entire body of prisoners at Hirohata was forced to kneel in zero weather for three hours because one American had uttered the word "good" following a raid by American planes (R 57, Ex. 20). Those who could not maintain the kneeling position were beaten and slapped by Japanese guards who were in charge of accused (Ex. 20).

As to Specification 6: In March 1945 Sergeant Ernest H. Loy, Fox, Hernandez, Pritchard and Lee, who were involved in the theft of some fish from a Japanese storeroom, were struck fifty times each with a baseball bat by accused and two other Japanese. Fox and Hernandez were then thrown into a cold water reservoir and further beaten after their removal. Two of the men were treated by an American medical officer for injuries received as a result of the beating (R 21).

As to Specification 7: Small quantities of Red Cross supplies were occasionally received by the prisoners, although the American POW doctor was forced to sign receipt for supplies that were never received, some that were received in part, and others that were distributed but later retaken by the Japanese (Ex. 22). Accused stole most of the medical supplies and food from the packages (R 42, 44, 57, Ex. 22, 23). When ten boxes were issued to sick POW's in July 1945, accused carried two entire boxes from the camp under cover of darkness and later removed everything but moldy fruit and a little food from the remaining eight (Ex. 22). When the camp commander learned of accused's thefts, the stealing of food was reduced, but thefts of medicine continued (Ex. 22).

As to Specification 8: In September 1944 Sergeant Tom Melody, accused of wearing improper uniform, was tied to a stake by accused and three other Japanese and a water hose played over his nose and mouth until he lost consciousness. After regaining his senses he was clubbed and beaten about the body by the four Japanese (Ex. 14, 25). On another occasion accused beat Private Mullholland about the head with a belt for no apparent reason (Ex. 13). He took a leading part in numerous other incidents in which individuals and group of men were clubbed, given the water cure, doused in icy water, and otherwise mistreated (R 41, 46, 51, 71, Ex. 24, 28, 29, 31, 32). One Italian national who was imprisoned testified that he witnessed daily beatings of Americans by accused for a period of six months

(Review of the Staff Judge Advocate, cont'd.)

(R 51, 56). On several occasions accused ordered hospital patients out of bed and "double-timed" them past the home of a female acquaintance in order to impress her with his authority (R 58).

In his capacity as medical orderly accused frequently ordered harmful treatment for sick prisoners and forced many to work, exercise, and stand in formations of long duration without rest (Ex. 22, 25, 40, 57). Some of the sick were beaten when they fell exhausted after having been forced to run long distances (Ex. 22).

b. For the Defense:

The accused, after being duly advised of his right as a witness, elected to testify in substance that he was assigned to Hirohata Prisoner of War camp on 26 March 1944 (R 132). In March 1945 he was ordered by Corporal Ishida, his superior, to beat two or three of a group of sixteen prisoners who had stolen rice from a ship (R 132, 133). He struck each of them three times about the body with a club, but put none into the water reservoir, although he saw Ishida immerse 5 or 6 prisoners (R 132, 133). He possessed no authority to take disciplinary action against any prisoners of war, and only participated in such incidents when ordered to do so by higher authority (R 164). He learned that the American prisoner Allen was beaten by civilian guards, but he was not present (R 134). He recalls the incident alleged in specification 3, stating that he was ordered by Ishida to strike one prisoner with his palm (R 134, 135, 150). The entire body of prisoners was forced to assume a semi-kneeling position by the camp sergeant major on one occasion when a prisoner expressed pleasure at the success of a nearby American air raid, but accused did not participate in the incident (R 135, 136). He has no recollection of the beatings and mistreatment alleged in specification 6 (R 136), and took no Red Cross supplies from the camp, with the exception of a few American cigarettes given him by the American camp doctor (R 137, 151). He ate some Red Cross food at the Japanese mess, however, that had been given him by Corporal Ishida (R 155).

Japanese doctors visited the camp two or three times weekly to examine the prisoners (R 140), and they and the American doctor determined which of the prisoners were physically fit for work details (R 140, 141, 156). Accused gave the sick prisoners daily exercise at the order of the camp commander and the medical officer (R 142).

Two Japanese officers who commanded Hirohata camp from 22 July 1944 to 2 September 1945 testified to the effect that they did not observe accused beat or otherwise mistreat any prisoners of war (R 87, 91, 95, 96), nor did they receive complaints from prisoners regarding his conduct (R 83, 96). Both testified that they had no authority to administer disciplinary punishment to prisoners since such authority was vested only in officials at Osaka Main Camp (R 93, 103). Orders were issued to all subordinates that corporal punishment of prisoners would not be condoned (R 93, 101). Both commanders testified, however, that they left the camp each evening at about 5 p.m. and stayed overnight at the camp only about one night each week (R 87, 101, 102).

Corporal Kitaro Ishida, a Japanese guard, testified that accused did not arrive at Hirohata Camp until March 1944. After the theft of rice from a Japanese ship by 16 Americans he was ordered by the ranking non-commissioned officer at the camp to punish the prisoners involved (R 125).

He thereupon beat the Americans implicated in the theft with a club, and ordered accused, his subordinate, to join in the beating (R 124, 129). Shortly thereafter he observed accused strike two or three prisoners a few times each with a fencing stick (R 124, 125). This was the only occasion on which he saw accused strike American Prisoners (R 126, 130).

The affidavits of 11 former American prisoners of war who had been confined at Hirohata Camp placed chief responsibility for the beatings and mistreatment on Corporal Ishida. Several affiants stated that Ishida was solely responsible for the mistreatment of Sergeant Tom Melody, while others failed to mention the name of accused in connection with the brutalities described in the prosecution evidence in support of specification 1 (Def. Ex. A-K).

5. OPINION:

Accused admits his presence at Hirohata Camp during the greater portion of the period alleged in the Charge and also his active participation in two incidents involving beatings and mistreatment of American prisoners of war, although justifying his action on the basis of superior orders in both instances. Parole testimony of two prosecution witnesses and thirty affidavits of former American prisoners of war, however, positively establish the identity of accused and his illicit connection with the almost daily beating, kicking and other brutal mistreatment of numerous prisoners without cause or trial. An Italian national who was formerly a prisoner testified that he witnessed daily beatings by accused for a period of six months.

The several defense affidavits that place chief responsibility for the atrocities on another Japanese and which fail to mention the name of accused in connection with a few specified incidents have little or no affirmative evidential value to the defense case. The testimony of the two Japanese camp commanders to the effect that they witnessed no mistreatment must be considered with their admission that they spent only eight or nine hours daily at the camp, since most of the atrocities alleged by the prosecution took place in the evening after the Japanese officers had left the camp for their homes.

Accused's participation in the crimes was a question of fact and the commission, as the trier of fact, was amply justified in rejecting the defense of denial in favor of overwhelming prosecution evidence to the contrary.

The findings were proper, the sentence legal and appropriate to the offenses, and no errors are found which injuriously affect any substantial right of the accused.

6. RECOMMENDATION:

It is accordingly recommended that the sentence of thirty years be approved and ordered executed. A form of action designed to carry into effect the foregoing recommendation is hereto attached for your consideration.

I Concur:

/s/ JAMES A. BYRUM
JAMES A. BYRUM
1st Lieutenant, J.A.G.D.,
Assistant Staff Judge Advocate.

/s/ ALLAN R. BROWN
ALLAN R. BROWN
Lt. Colonel, J.A.G.D.,
Staff Judge Advocate.

**HEADQUARTERS EIGHTH ARMY
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APO 343**

**Yokohama, Japan
June 1946**

In the foregoing case of Superior Private Akiyoshi
Tsujino of the Imperial Japanese Army the sentence is
approved and will be duly executed. The Sugamo Prison,
Tokyo, Honshu, Japan, is designated as the place of
confinement, or elsewhere as the Supreme Commander for
the Allied Powers, or other proper authority may direct.

/s/ R. L. Michelberger
R. L. MICHELBERGER
Lieutenant General, USA,
Commanding

CERTIFIED TRUE COPY

/s/ Frank M. Winston
FRANK M. WINSTON
1st Lt., QMC